

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 22-90273-11
§ HOUSTON, TEXAS
COMPUTE NORTH HOLDINGS, INC., § MONDAY,
ET AL, § OCTOBER 31, 2022
DEBTORS. § 5:09 P.M. TO 6:05 P.M.

HEARING ON ASSET SALE

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(Recorded via CourtSpeak; no log notes.)
(Audio distortion in some appearances via Zoom)

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(Please also see Electronic Appearances.)

1 HOUSTON, TEXAS; MONDAY, OCTOBER 31, 2022; 5:09 P.M.

2 THE COURT: All right. On the 5:00 o'clock docket,
3 we have the Compute North Holdings case, it's 22-90273.

4 We're going to take appearances in court. If I can
5 ask that you all sort of quietly exit from the -- excuse me --
6 from the Talen case, and then we'll take appearances on the
7 phone in the Compute North case.

8 (Pause in proceedings)

9 MR. GROGAN: Good afternoon, Your Honor. James
10 Grogan from Paul Hastings, here for the Debtors in Compute
11 North.

12 THE COURT: Good afternoon, Mr. Grogan.

13 Are there any other in-court appearances?

14 Mr. Perez.

15 MR. PEREZ: Good afternoon, Your Honor. Alfredo
16 Perez, along with Jessica Liou, who is on the phone, for
17 Marathon.

18 THE COURT: Thank you.

19 Mr. Gibbs.

20 MR. GIBBS: Good afternoon, Your Honor. Chuck Gibbs
21 with McDermott, Will & Emery, along with my partner Kristin
22 Going, here as proposed counsel for the Official Unsecured
23 Creditors Committee.

24 THE COURT: Thank you.

25 Mr. Buoni.

1 MR. BUONI: Your Honor, Joe Buoni with Hunton
2 Andrews Kurth, here on behalf of Generate Lending, along with
3 my co-counsel from Kirkland & Ellis that I'm sure will be
4 making an appearance.

5 THE COURT: Thank you.

6 All right. On the phone, Mr. Trausch.

7 MR. TRAUSCH: Good evening, Your Honor. David
8 Trausch from Haynes and Boone on behalf of TZ Capital
9 Holdings, LLC.

10 THE COURT: Thank you.

11 Mr. Marcus.

12 MR. MARCUS: Good evening, Your Honor. Christopher
13 Marcus from Kirkland & Ellis on behalf of Generate Capital.

14 THE COURT: Good evening.

15 Mr. Micheli.

16 MR. MICHELI: Good evening, Your Honor. Matt
17 Micheli from Paul Hastings on behalf of Compute North Holdings
18 and its affiliated Debtors.

19 THE COURT: Thank you. From 412-559-0108.

20 MR. FREEDLANDER: Yes, Your Honor. Good afternoon.
21 Mark Freedlander, McGuireWoods, on behalf of the Constellation
22 entities.

23 THE COURT: I missed your name. Can I get you to
24 repeat it for me? I heard your client.

25 MR. FREEDLANDER: Yes, Judge. Mark Freedlander,

1 F-r-e-e-d-l-a-n-d-e-r.

2 THE COURT: All right. Thank you, Mr. Freedlander.

3 MR. FREEDLANDER: Thank you, Your Honor.

4 THE COURT: Mr. Harvey.

5 (No verbal response)

6 THE COURT: Mr. Harvey, I think you may be on the
7 phone, muted.

8 MR. HARVEY: Thank you, Your Honor. Drake Harvey
9 with Compute North.

10 THE COURT: Who's your client again?

11 MR. HARVEY: I'm Drake Harvey, I'm the President of
12 Compute North.

13 THE COURT: Ah, thank you, Mr. Harvey.

14 Mr. Ruff.

15 MR. RUFF: Yes. Good evening, Your Honor. Jayson
16 Ruff for the U.S. Trustee. Can you hear me okay at this time?

17 THE COURT: I can hear you fine. Thank you.

18 MR. RUFF: All right. Thank you, Your Honor.

19 THE COURT: Mr. Silverman.

20 MR. SILVERMAN: Good evening, Your Honor. Matthew
21 Silverman, Pryor Cashman, LLP.

22 THE COURT: Thank you, Mr. Silverman.

23 All right. Tell me what we have, Mr. Grogan.

24 MR. GROGAN: Thank you, Your Honor.

25 Your Honor, we're here today on one asset sale.

1 This falls under our bidding procedures process, which the
2 Court set in motion a few weeks ago. And since then, we've
3 been soliciting bids. We've had a -- we've had an active
4 marketing process. The bidding has been robust across the
5 various Debtor entities. We have multiple bids on multiple
6 sets of assets.

7 We had a single bid, however, on the equity that the
8 estate holds in compute -- in CN Borrower, LLC, which is the
9 direct owner of the entities that own the Kearney and Wolf
10 Hollow bitcoin mining projects. That bidder was Generate.
11 And so we're here today to approve -- seeking approval of the
12 sale of that equity interest to Generate.

13 Just as a high-level overview, the equity would be
14 sold for \$5 million. We are aiming to close this transaction
15 tomorrow. Really, the only things that stand in the way of
16 that objective would be getting the Court's approval and an
17 order entered and also executing a transition services
18 agreement, which we anticipate will be done tomorrow and which
19 would provide for interim services by Compute North and the
20 Kearney and Wolf Hollow sites for 30 days, in exchange for
21 continued payments to be made under the TSA.

22 Your Honor, the buyer would then have a short period
23 post-closing until November 3rd, to make a decision on any
24 contracts which are housed up at Compute North, LLC, and which
25 the buyer would like us to assume and assign down to the

1 projects.

2 If those contracts has associated cure costs, the
3 buyer will be responsible for paying the cure. The buyer does
4 not have any obligation to take contracts, however.

5 Your Honor, also, the buyer is not committing to
6 hire employees; however, we did agree that, as part of the
7 overall structure, the seller would be waiving any non-compete
8 or non-solicitation provisions for the employees who are
9 currently working onsite at Kearney and Wolf Hollow, basically
10 paving the way for offers of employment to be made after the
11 expiration of the TSA period.

12 And lastly, there is -- at a high level, there is a
13 mutual -- global mutual release against Generate, claims
14 against Generate, and a release of claims by Generate, Wolf
15 Hollow, and Kearney of the Debtors and representatives.

16 We do have two witnesses who would testify in
17 support of this, and I -- if the Court would like me to
18 introduce my evidence at this point --

19 THE COURT: Let me see --

20 MR. GROGAN: -- I can or --

21 THE COURT: I want to hear from the committee --

22 MR. GROGAN: Yeah.

23 THE COURT: -- and then I want to hear if there's
24 any opposition to your motion, so that I know the context in
25 which I'm hearing the evidence.

1 MR. GROGAN: Absolutely.

2 THE COURT: Thank you.

3 Mr. Gibbs.

4 MR. GIBBS: I'll shortly say good evening, Your
5 Honor.

6 THE COURT: Good evening.

7 MR. GIBBS: I'm happy to just give you the bottom
8 line or a little bit more color, at your preference.

9 THE COURT: Whatever you want.

10 MR. GIBBS: The spoiler alert is that the committee
11 supports this motion and would ask Your Honor to enter the
12 order that the Debtor is tendering up. But I would like the
13 Court to know -- and the creditors present by video or any
14 other interested party -- that the reasons why we came to the
15 position that we are supporting this motion.

16 We were engaged by the committee three weeks ago
17 today; and, immediately thereafter, we started working pretty
18 feverishly to obtain as much information and as many documents
19 from the Debtors and their advisors as possible.

20 One of the first requests we made was for all
21 documents regarding the Generate loan that was owed by the
22 nonDebtor affiliates that actually owned the facility that are
23 guaranteed by Debtor entities. The face amount of that note,
24 prior to modification, was over \$100 million. We wanted all
25 documentation relating especially to the exercise of the

1 pledge of the equity interest that was accomplished by
2 Generate pre-petition.

3 In one of our early meetings with Debtors' counsel,
4 they told us they were negotiating for the sale of the equity
5 interests in the nonDebtor borrowers to Generate in order to
6 provide much needed liquidity to the estate and to address
7 concerns with the existing project management agreements that
8 were in existence between the Debtor and the Kearney and Wolf
9 Hollow entities on which the Debtor was losing money on a
10 daily basis.

11 We immediately began an investigation into whether
12 the exercise of the equity pledge was done correctly; whether
13 there were any holes in the Generate lien perfection or any
14 other flaws in the documentation regarding the loan; and
15 three, if there were any viable causes of action against
16 Generate for exercising those remedies in August of 2022,
17 including exercising the equity pledge, taking control of the
18 Wolf Hollow bank account, which had in excess of \$23 million,
19 and also when they amended the loan documents to increase the
20 interest rate and to revise the make-whole provision.

21 We provided the committee the results of our
22 investigations on Friday. And without waiving privilege, I
23 can tell the Court that our conclusions were that the exercise
24 of the pledge was done correctly, that there were no viable
25 arguments that we could find that Compute North could exercise

1 control over the nonDebtor borrowers in which they had an
2 equity interest because of the valid pre-petition exercised by
3 Generate of their pledge.

4 We've also concluded the Generate loan is properly
5 documented and perfected and that there were no defects in
6 their security agreements, the UCC filings, or the mortgages.

7 We also concluded that no Debtor entity had an
8 interest in any of the \$23 million that was in the Wolf Hollow
9 bank account that was swept or taken control of.

10 We did conclude that there were facially valid
11 arguments that the amendments to the credit agreement were
12 voidable as either a preference or fraudulent conveyance. The
13 primary result of those amendments was an increase in the
14 interest rate and the addition -- or modifications to the
15 make-whole, which result in the amount of the debt being owed
16 rising to \$130 million, approximately, rather than the \$100
17 million before the amendment.

18 As I indicated, the original Generate loan was in --
19 slightly in excess of \$100 million, and that loan is
20 guaranteed by two Debtor entities. The consideration that the
21 committee focused on in evaluating this proposed sale was that
22 the purchase and sale agreement that's on before the Court
23 today includes a full release and payoff of the Generate loan,
24 including the unsecured guarantees made by the two Debtor
25 entities.

1 The Debtor entities are also receiving, as you
2 heard, \$5 million cash, which they are in fairly desperate
3 need of, and the commitment to enter into the transition
4 services agreement that Mr. Grogan also mentioned that allows
5 the Debtors entity -- Debtor entities to be properly
6 compensated for the work that they'll continue to do to
7 operate Kearney and Wolf Hollow until the conclusion of the
8 transition services agreement.

9 And there's also a reassignment of the portion of
10 the Atlas master agreement back to Compute North. And
11 Mr. Grogan, I think, has said he would explain that in more
12 detail, to the extent the Court has questions.

13 To the negative, the purchase and sale agreement
14 does include very broad releases for Generate. The committee
15 was concerned about those at this stage of the case because
16 the committee, frankly, had not had enough time to fully
17 investigate through depositions or informal meetings that we
18 would have liked. But we dealt with the time line that we had
19 to deal with.

20 That said, the analysis that we were able to do,
21 based on the loan documentation and the exercise of the
22 pledge, led us to conclude that there were no valid arguments
23 to challenges I indicated, the assertion that \$101 million was
24 due and owing on the Generate loan and that the -- and that
25 Compute North and Compute North, LLC have unsecured guarantee

1 obligations. Therefore, the release of those guarantee
2 obligations significantly lowers the total claim pool in this
3 case, much to the benefit of the other creditors in this case,
4 and that those reductions in claims outweigh the benefit of
5 trying to retain for further investigation potential claims
6 against Generate, given our conclusion that the loan was
7 properly documented, the pledge was properly accomplished,
8 that the Debtors had no interest in the cash that was taken
9 control of, et cetera.

10 So, for those reasons, the committee evaluated those
11 -- the options and concluded that they were in support of and
12 would not oppose this motion today.

13 THE COURT: I think I heard you say this. I just
14 want to be sure that I wasn't being rosy in my listening, that
15 you have a potential claim that might affect whether the loan
16 is \$101 million or a hundred and thirty ish million dollars,
17 that the outcome of the release moots any disadvantage of
18 having potentially engaged to a hundred and thirty because
19 that spread is all being released as part of this anyway. Is
20 that --

21 MR. GIBBS: Let me --

22 THE COURT: -- what you told me or did you tell me
23 something different than that.

24 MR. GIBBS: Let me make sure I'm understanding what
25 you're asking me whether I told you.

1 THE COURT: Let me try again.

2 I think that what you told me was, is that there was
3 a potential problem with the amendments that may have driven
4 the amount of the loan claim from roughly a hundred plus
5 million to around 130 million.

6 MR. GIBBS: Uh-huh.

7 THE COURT: But that, because of the release, that
8 would fully restore the parties back as if that had never
9 occurred; and, therefore, there would be no remaining damages
10 to sue for, even if there was a problem with those amendments
11 as having been preferential.

12 MR. GIBBS: That is correct. That is our
13 conclusion.

14 THE COURT: Okay. That's what I thought I heard. I
15 just wanted to be really clear that that's what I did hear.
16 Okay.

17 MR. GIBBS: Thank you.

18 THE COURT: Thank you.

19 MR. GIBBS: Uh-huh.

20 THE COURT: Is there any party, besides the
21 committee, that wishes to make any statement in favor of the
22 deal? And then I'm going to hear anyone who believes that
23 it's inappropriate to approve the deal and then we're going to
24 open the evidentiary record.

25 So parties that have already been recognized, you

1 can speak up if you want to speak for or against the deal.

2 Let's start with in favor of it and then we'll go to opposing
3 it. All right.

4 MR. MARCUS: Your Honor? I'm sorry.

5 THE COURT: No, go ahead, Mr. Marcus.

6 MR. MARCUS: Yes. Thank you, Your Honor.

7 Christopher Marcus from Kirkland & Ellis on behalf of
8 Generate.

9 Your Honor, I don't have much to say. I wanted to
10 just -- we're obviously in favor of the deal.

11 I did want to point out that, in addition to the
12 waiver of the guarantee claim, Generate has also agreed to
13 waive the rejection damage claim, as well, adding more value.

14 I don't want to -- I don't need to say more, Your
15 Honor. I just wanted to get up here in case there are any
16 questions. I'm happy to answer any questions Your Honor has
17 about the transaction.

18 THE COURT: So, Mr. Marcus, I -- given that there's
19 no stated opposition and I'm assuming that the evidence is
20 going to support doing this, could I ask you and Mr. Grogan a
21 question just to try and get this thing closed in the morning?

22 If I order that the Debtor will provide transition
23 services on reasonable terms, where, if you all can't agree on
24 it, we'll then impose the reasonable terms for those, will
25 that allow an earlier closing of the deal? So you'd come back

1 to me, for example, if you couldn't reach the details of an
2 agreement -- or will that impair somebody's rights? Which I'm
3 not trying to do that. I'm trying to get you all to a closing
4 tomorrow, if that's helpful, and I'm sort of willing to just
5 order it to be on reasonable terms and assume that you all
6 will get there, but if you can't, come back here if you want
7 to close without a deal. What do you all want to do?

8 MR. MARCUS: Well, Your Honor, from my perspective,
9 that's certainly helpful. I don't want to get out over my
10 (indiscernible) I'm not sure if there are other kind of
11 corporate matters that need to be tidied up before the actual
12 closing. But from the perspective of the transition services,
13 obviously, Your Honor's input there was very helpful, and of
14 course we'll try and push it (indiscernible)

15 THE COURT: Mr. Grogan?

16 MR. GROGAN: Your Honor, we're fine with that, as
17 well.

18 THE COURT: So why don't I do this? We'll -- we're
19 going to make a docket entry that the parties may either enter
20 into a transition services agreement that is mutually
21 acceptable to them or may close with an agreement that the
22 Court will determine the terms of the transition services
23 agreement, which will be imposed on market rates for 30 days.

24 And if you all -- you know, talk to your client.
25 Your clients may not want to close with the risk that I do

1 something crazy, and that's fine. But I wanted to give you
2 all that option to do it that way.

3 MR. GROGAN: Okay. Thank you, Your Honor.

4 MR. GIBBS: Your Honor?

5 THE COURT: Mr. Gibbs. You're very concerned I'm
6 going to do something crazy and want the chance to review it.

7 MR. GIBBS: No, Your Honor, I'm not at all. I'm
8 concerned that I skipped over a page of my notes.

9 And I wanted the record to reflect and the Court to
10 know that part of our decision was influenced by the fact that
11 it did not appear that there would be any higher and better
12 offer for these assets that are being acquired under this
13 agreement. This is even before you took into account the
14 release of the guaranteed claims. And it was really that, in
15 addition to the other factors, that drove the committee's
16 decision.

17 THE COURT: Thank you, Mr. Gibbs.

18 MR. GIBBS: Uh-huh.

19 THE COURT: All right. Let's -- I'm sorry.
20 Mr. Perez.

21 MR. PEREZ: No, I'm against it, Your Honor, the
22 second time you've ruled before I had the chance to speak
23 today. But let's just hope that doesn't continue to happen.

24 THE COURT: You didn't say that. Come on up.

25 MR. PEREZ: Good afternoon, Your Honor. Alfredo

1 Perez.

2 Your Honor, I represent Marathon Holdings and we did
3 file an objection at Docket Number 337. And in that, in
4 Docket Number 337, we set forth -- well, it's a long
5 objection, it's about 12 pages. It sets forth a lot of the
6 things. And we included proposed language -- and to the
7 extent I mess something up, Ms. Liou will correct me.

8 THE COURT: Let me just interrupt you. I've been
9 out here pretty much all day.

10 MR. PEREZ: I understand.

11 THE COURT: And I have not read your objection. And
12 I think it's not fair to make you proceed without me taking a
13 minute just to read it.

14 MR. PEREZ: Perfect.

15 THE COURT: So let me take some time to read it.

16 MR. PEREZ: And --

17 THE COURT: And for the record, what I ruled earlier
18 today without giving you a chance to speak, I ruled for you,
19 so ...

20 (Laughter)

21 MR. PEREZ: It's still a bad precedent, Your Honor.

22 MR. GROGAN: I would note that -- and I don't think
23 you've had a chance to read our revised form of order, but we
24 did add --

25 THE COURT: That's right.

1 MR. GROGAN: We did add a paragraph or two.

2 Mr. Micheli will cover that in more detail.

3 But to address -- we actually got three, I think,
4 contract-related objections. And essentially, we were trying
5 to preserve all of those issues. Since the designation would
6 not occur until November 3rd, to the extent we had any non-
7 consensual assumptions and assignments, we would come back on
8 November 7th and deal with that subsequently.

9 THE COURT: Thank you.

10 (Pause in proceedings at 5:30 p.m.)

11 (At 5:36 p.m.)

12 THE COURT: Mr. Grogan and probably Mr. Marcus, if
13 you look at Paragraph 28 of the objection, on the bottom of
14 Page 11 -- if it's helpful, I can put it up on the screen.

15 MR. MARCUS: Your Honor, that would be very helpful.
16 Thank you.

17 MR. PEREZ: Your Honor, if I may. They did try to
18 address it in their form of order. I don't think they quite
19 did it, but they did try to address those three things --

20 THE COURT: Okay.

21 MR. PEREZ: -- in their form of order.

22 THE COURT: So maybe I should look at the form of
23 order because it seems to me that your objection makes a huge
24 amount of sense. Some of the language that you're using here
25 may determine that you have certain rights. And I don't want

1 to, today, determine that you have rights. I want to try and
2 determine that you're not giving up any rights today. So let
3 me look at that language then and see --

4 MR. PEREZ: I think it's on 350-2, Page 23 of 25.

5 THE COURT: Thank you.

6 UNIDENTIFIED: That's right, Your Honor. It's
7 Paragraphs 30 and 31.

8 THE COURT: And for those of you that have been
9 listening today, I apologize I haven't read this stuff before
10 I got here, but I have been out here pretty much all day.

11 (Pause in proceedings)

12 THE COURT: So I think he deserves more than what's
13 in 30 and 31, but not everything that he put in his motion.
14 Can I just go back to his motion and sort of look at his
15 language and tell you where I think things go too far and you
16 all tell me if you think you can work that out, or do you all
17 want to do this some other way?

18 MR. GROGAN: Your Honor, that's fine with us.

19 THE COURT: So ...

20 (Pause in proceedings)

21 THE COURT: I think that, at the bottom of Page 11,
22 I would leave the first part alone. And then, after the
23 comma, I would say:

24 Marathon's right to assert setoff, recoupment, and
25 common law or statutory rights and -- under similar doctrines,

1 whether arising out of state law or bankruptcy law, shall be
2 expressly preserved, notwithstanding any such assumption,
3 assignment, purchase, or transfer.

4 And I would take out "shall be expressly preserved,"
5 take out this language right here, taking out the
6 "notwithstanding" language and inserting in its place:

7 And all of the Debtors' and Generate's responses are
8 summarily preserved.

9 So he can assert, you all can respond, and no rights
10 are taken away.

11 With respect to the paragraph at the top of Page 12,
12 I don't see anything wrong with his language. I don't think
13 that it's much different than your language.

14 And with respect to the final paragraph, I would
15 simply add at the end and all responses and objections to his
16 objections are similarly preserved.

17 Does that -- am I missing something or is that all
18 that we need to do to get this resolved?

19 MR. GROGAN: Your Honor, that's fine with us. We --
20 you know, our apologies. We were trying to craft a little bit
21 of a one-size-fits-all, rather than craft something that was
22 specific for Marathon, but --

23 THE COURT: Right.

24 MR. GROGAN: But yeah --

25 MR. PEREZ: And Your Honor.

1 THE COURT: If you don't have any -- if you don't
2 have any problem with that resolution, it's sometimes easier
3 to do them separately then to figure out a global solution.

4 But does that cause heartburn to anyone?

5 MR. GROGAN: The only question I have is the form of
6 order needs to be acceptable to Generate.

7 THE COURT: All right.

8 MR. GROGAN: So I need --

9 THE COURT: Mr. Marcus?

10 MR. GROGAN: -- Mr. Marcus to say --

11 MR. MARCUS: Well, I was trying to follow along with
12 Your Honor. It doesn't sound to me like those would be
13 problematic. I just -- I would like to be able to just see it
14 (indiscernible)

15 THE COURT: Sure. Ms. Liou, are you there on the
16 phone there?

17 MS. LIOU: Yes, Your Honor. Jessica Liou from Weil
18 on behalf of Marathon.

19 I just wanted to add on the middle paragraph,
20 regarding assets that belong to Marathon, the Debtors have now
21 proposed Paragraph 31, which I think is good. We just want to
22 make a slight revision to it. It says they're not authorized
23 for sale (indiscernible) assignment or transfer of assets that
24 are owned by nonDebtor third parties. And then I think the
25 rest of your suggestion works from our perspective.

1 THE COURT: Thank you.

2 Let me ask who has the master copy of the order that
3 was filed at 350-1. Is that controlled by Mr. Micheli?

4 MR. MICHELI: It would --

5 MR. GROGAN: Mr. Micheli is --

6 MR. MICHELI: Yes, Your Honor, I have that.

7 THE COURT: Mr. Micheli, with respect to the changes
8 that I tried to read into the record, are those things that
9 you can incorporate, so that we can still get an order entered
10 tonight?

11 MR. MICHELI: Yes, Your Honor. We can put
12 (indiscernible) and incorporate those.

13 MR. TRAUSCH: Your Honor --

14 THE COURT: If I can -- if I can get you to
15 incorporate the -- we'll come back to whoever else that was.
16 If I can get you to incorporate those, send it to Mr. Marcus,
17 send it to Mr. Perez, and let you all work through that
18 language. I -- actually, don't send it to Mr. Perez; send it
19 to Ms. Liou because she's in a position to receive it and read
20 it.

21 Yes. And who else was that speaking?

22 MR. TRAUSCH: Thank you, Your Honor. I'm sorry. I
23 was -- this is David Trausch from Haynes and Boone on behalf
24 of TZ Capital Holdings.

25 We had something -- I -- my client has -- would like

1 some clarification. We're not necessarily opposed. We
2 understand the need for speed (indiscernible) even in the
3 proposed agreement. But you know, the 2002 period, we have
4 (indiscernible) is not going to be helpful here. So we're not
5 asking to close things down, but what we want is some
6 clarification. There's some ambiguity in the document.

7 And so (indiscernible) example is the seller is CN
8 Borrower, LLC. And according to 4.23 of the PSA, it has no
9 employees.

10 Now I heard Mr. Grogan say that the deal was -- or I
11 think I heard him say earlier that the deal was that they
12 would -- that the other nonDebtors that are not the sellers
13 would waive non-compete and non-solicitation (indiscernible)
14 at the Wolf Hollow and Kearney facilities. But Section 6.13,
15 which is where that provision comes from, is not limited in
16 any way, it's -- with regard to any of the Debtors'
17 facilities.

18 And so, if that clarification confirms as to the
19 employees, that it's limited to the ones currently onsite at
20 the Wolf Hollow and Kearney facilities, that it does not
21 affect (indiscernible) that my client has an interest in and
22 that would potentially resolve that issue.

23 The other part relates to contracts, as well. And
24 that is, again (indiscernible) that somehow, even though
25 they're not parties to the PSA, any of the affiliated Debtors

1 can assign contracts. And you know, we're going to find out
2 on November 3rd, after they're asking you to enter this order.
3 And quite frankly, we still have the sale process going on, on
4 -- related to the King Mountain (indiscernible) and so we're
5 not -- we'd just like clarification that nothing that's being
6 contemplated by this transaction impacts (indiscernible) my
7 client's rights, or King Mountain contracts or employees.

8 THE COURT: So --

9 MR. TRAUSCH: And --

10 THE COURT: I'm sorry. I'm just --

11 MR. TRAUSCH: No, those are the clarifications.

12 THE COURT: So --

13 MR. TRAUSCH: And there's one --

14 THE COURT: If you look at 350-1, what language
15 would you insert where to be certain that your client's rights
16 are preserved?

17 MR. TRAUSCH: Well, I was looking at the
18 (indiscernible) that got filed about 45 minutes, maybe less,
19 before the hearing. And I think it probably goes at the end
20 somewhere, that -- I mean (indiscernible) my client, to be
21 frank, is it's going to be (indiscernible) the bidding on the
22 King Mountain assets because we aren't going to know in time -
23 - it's already been submitted that they don't know that
24 there's -- whether those contracts are going to still be there
25 or not (indiscernible) affiliates and requested contracts.

1 THE COURT: Yeah. So let's assume --

2 MR. TRAUSCH: And --

3 THE COURT: Let's assume just for a moment that the
4 Debtors agree that they should make the clarification you
5 want. I'm just trying to figure out, mechanically, what
6 should be written down. And then we'll see whether they agree
7 with it or not.

8 MR. TRAUSCH: You know, if we defined the King
9 Mountain project to be the -- I think (indiscernible) LLC, the
10 joint venture, the King Mountain project, and then we say
11 that, notwithstanding anything to the contrary in the order,
12 that nothing in (indiscernible) contemplates a -- you know
13 (indiscernible) assumption or assignment of any contracts
14 related to the King Mountain project or any employees used for
15 the King Mountain project, I think that covers the issues.

16 THE COURT: Okay. Mr. Grogan, Mr. Marcus, is that
17 something that works for you or does not work for you?

18 MR. GROGAN: Your Honor, unfortunately, I think this
19 is -- this really is getting in the way of what is already a
20 very complicated sale process. We are trying to maximize
21 value. We're selling separate assets.

22 Kearney and Wolf Hollow are hundreds, if not
23 thousands, of miles away from King Mountain. And Mr. Trausch
24 represents a secured lender in an entirely different facility.
25 We're running a sale process for his facility.

1 THE COURT: So --

2 MR. GROGAN: I'm trying --

3 THE COURT: So what's --

4 MR. GROGAN: I've got --

5 THE COURT: -- wrong with --

6 MR. GROGAN: I've got active bids.

7 THE COURT: What's wrong with the language he's
8 asked for then?

9 MR. GROGAN: We need -- the Debtors can't be
10 constrained by -- his client is not even bidding for assets.
11 So I -- really, I don't need a secured lender -- another -- a
12 secured lender on different collateral telling me what I can
13 or can't do on somebody else's collateral.

14 THE COURT: No. What he's asking for -- and maybe I
15 misunderstood him -- is something in this order that says that
16 your authority to assume and assign contracts to Generate does
17 not include the authority to assume and assign any contracts
18 related to King Mountain, your authority to release employment
19 agreements and non-competes doesn't extend to King Mountain.
20 That's what he's asking for. If they're a thousand miles away
21 --

22 MR. GROGAN: Well --

23 THE COURT: -- I don't see why that hurts you.

24 MR. GROGAN: Yeah, and -- I don't -- it's -- you
25 know, I -- it's my problem to figure out how to service both

1 sets of assets. I just -- I don't see -- you know, NextEra is
2 not running the Debtors and they shouldn't have any say over
3 our staffing, and it's as simple as that.

4 THE COURT: Well --

5 MR. GROGAN: On the contract --

6 THE COURT: This order --

7 MR. GROGAN: On the --

8 THE COURT: -- author --

9 MR. GROGAN: -- contract issue --

10 THE COURT: This order may authorize it, is what
11 he's saying, so ...

12 I'm going to sustain the objection and require that
13 the parties agree on language, not that you can't do that, but
14 that you can't do that without further court approval. So
15 this -- today's authorization isn't going to authorize you to
16 do anything at King Mountain that you're not previously
17 authorized to do.

18 If you need to assume and assign a contract to
19 Mr. Marcus that deals with King Mountain, which you're telling
20 me isn't really going to happen --

21 MR. GROGAN: That's not --

22 THE COURT: -- then you got --

23 MR. GROGAN: -- going to happen.

24 THE COURT: -- to come back.

25 MR. GROGAN: I'm --

1 THE COURT: Yeah.

2 MR. GROGAN: I'm more concerned about the employees.

3 But you know, there may be --

4 THE COURT: Well --

5 MR. GROGAN: -- somebody who works on Kearney who --

6 THE COURT: If you have the right to -- all that I'm
7 saying is this order isn't going to authorize it. If they're
8 -- if you already have the right to do it, then you already
9 have the right to do it. If you don't have the right to do it
10 --

11 MR. GROGAN: Oh --

12 THE COURT: -- I'm not giving the right to --

13 MR. GROGAN: It -- that's fine, Your Honor.

14 THE COURT: Okay.

15 MR. GROGAN: I am okay with that because we -- this
16 order actually does not commit Generate to hire any employees,
17 so, if we --

18 THE COURT: Right.

19 MR. GROGAN: If we ever get to that point, you know,
20 I'm fine --

21 THE COURT: Certainly.

22 MR. GROGAN: -- having a second process.

23 THE COURT: Mr. Marcus, I assume you're okay with
24 that. Is that right?

25 MR. MARCUS: Yes, Your Honor. Subject to seeing the

1 language, I don't think we have a problem with it.

2 THE COURT: Mr. Micheli, if you would include that
3 your redraft of the language, as well. Thank you.

4 MR. MICHELI: (Indiscernible) thank you.

5 THE COURT: Yes, sir.

6 MR. TRAUSCH: (Indiscernible) in the proposed order
7 -- and I appreciate the attempt by the Debtors' counsel to
8 make some changes at the end, but I actually wanted to point
9 out that (indiscernible) it shouldn't be -- I don't think it
10 -- well, on the very first page (indiscernible) the part
11 that's confusing to me are the -- I think it's the fourth line
12 down, third line down. The definition of "acquired interest"
13 is (indiscernible) the Debtors' equity interest in nonDebtor
14 CN Borrower, LLC and its direct or indirect subsidiaries. And
15 it's different from the definition of "acquired interest" in
16 the PSA. And we're (indiscernible) that the finding that
17 they're asking the Court to make in Paragraph F, that the
18 acquired interests are property of the estate, and that's a
19 little bit concerning.

20 THE COURT: Mr. Micheli?

21 MR. MICHELI: Yes, Your Honor. I'm (indiscernible)
22 the definition of "acquired interests" meaning (indiscernible)
23 I believe that's where it originally came from, but I will
24 confirm that.

25 THE COURT: Thank you.

1 MR. MICHELI: Thank you.

2 THE COURT: Let me hear -- and I think Mr. Perez had
3 something, another issue to raise.

4 MR. PEREZ: Yeah.

5 THE COURT: Is that right?

6 MR. PEREZ: Well, Your Honor, just two points:

7 I want to, in essence, request that the Court
8 incorporate the record of this hearing in connection with the
9 order because there's lots of places in the order that says
10 they're selling things free and clear of liens, they're
11 assigning things. And then we have the "notwithstanding"
12 language in the back. So I just want to make sure the whole
13 record of the hearing is considered at the time.

14 Second, Your Honor, just on a procedural note, the -
15 - they don't have to tell us until the 3rd what contracts
16 they're assuming. But on the 1st, we have to object to the
17 cure amount and the assumption or assignment of the contract,
18 so that may create a procedural problem because you're kind of
19 putting the cart before the horse.

20 THE COURT: Where is that?

21 MR. GROGAN: I thought we were fixing that.

22 Mr. Micheli, weren't we -- since we're going to have the
23 hearing on contract cures and assumptions on the 7th, weren't
24 we changing -- I -- and I think that actually --

25 MR. MICHELI: (Indiscernible).

1 MR. GROGAN: Yeah.

2 MR. MICHELI: So we made clear -- so the
3 (indiscernible) addressed the object. The designation of
4 contracts will happen on November 3rd, in accordance with the
5 bidding procedures order that was approved. And parties will
6 then have an opportunity to object.

7 Some of those parties will have (indiscernible)
8 object to cure already because they received the original cure
9 notice. But each of the parties will have the opportunity to
10 object to adequate assurance and other contract assumption
11 issues at or before the hearing on November 7th, Your Honor.
12 And that appears in the added language in Paragraph 32 of
13 Docket Number 350-2.

14 MR. PEREZ: Maybe I'm being dense, Your Honor, but
15 the way that I read 32, it says any objections or responses to
16 the applicable cure amount or the Debtors' ability to assume
17 or assign the applicable contract have to be filed no later
18 than November 1st.

19 MR. MICHELI: That's correct, Your Honor.

20 And then, if you read the following, that the
21 Debtors' ability -- and then objections -- (b) deals with --
22 (b) deals with additional objections -- I'm sorry -- (y) --
23 excuse me, sorry. (b) deals with the ability to assume and
24 assign the contract, some of which, Your Honor -- those
25 contracts were noticed for assumption prior to November 3rd,

1 so the objection deadline will be November 1st. And for other
2 contracts, which we term as "additional contracts," those
3 would be effectively November 7th at 7 a.m.

4 And we tried to track the language of the bid
5 procedures order, Your Honor, which, admittedly, given the
6 timing of this sale, in connection with the overall timing,
7 was a bit -- was a bit (indiscernible) and this language
8 (indiscernible) directly from the bid procedures order
9 (indiscernible)

10 THE COURT: So the definition of "additional
11 contracts" is where?

12 MR. MICHELI: It appears in the bidding procedures
13 order, in Paragraph 22, and the bid procedures order, Your
14 Honor, in -- which can be found at Docket Number 236.

15 And Your Honor, I guess I should short-circuit this
16 a little bit. Because we have not identified -- and we can
17 (indiscernible) because we haven't actually identified those
18 contracts yet, I believe that all contracts related to this
19 sale would be noticed for assumption on November 3rd. And
20 that would make the objection deadline for those contracts
21 November 7th at 7 a.m.

22 THE COURT: Well, that makes it easier. Let's just
23 take out the first option of the November 1 objection deadline
24 and make it all November 7th, and then we won't have any
25 ambiguity. Thank you for that clarification.

1 MR. MICHELI: Okay.

2 THE COURT: Ms. Liou, go ahead.

3 MS. LIOU: Yes, Your Honor. I think that's a
4 helpful clarification because (indiscernible) the very last
5 sentence in that redline required objection or (indiscernible)
6 to adequate assurance of future performance by a successful
7 bidder on or before 8 a.m. central time on November 7th. But
8 the auction for other assets is actually scheduled for
9 November 8th, and so I think there's ambiguity there, as well.

10 In addition to that, I think there are a couple of
11 other provisions in the order that actually presupposed that
12 adequate assurance has already been provided and will be
13 provided by the buyer. And I just don't think that we can say
14 that, as well.

15 THE COURT: I need specific language that you have a
16 problem with on that.

17 MS. LIOU: I'm happy to flip through it.

18 MR. MICHELI: And Your Honor this would be
19 (indiscernible) our language (indiscernible) in Paragraph 38.
20 To be clear, notwithstanding the provisions of this order, we
21 are not seeking to impact parties' rights with respect to the
22 assumption and assignment of executory contracts or cure
23 amounts.

24 And so, you know, we understand this order, you know
25 needs to be a sale order that's going to -- that the purchaser

1 is going to be able to rely on. We also -- or (indiscernible)
2 those contracts are not before this Court today, nor are we
3 trying to impact Marathon's rights or any other party's rights
4 with respect to those contracts until we actually notice those
5 for assumption and give those parties an opportunity to
6 object.

7 THE COURT: Ms. Liou, is there anything specific you
8 want to identify.

9 MS. LIOU: (Indiscernible) Your Honor. There are
10 actually several provisions in here that I think create
11 ambiguity because they say something different than what the
12 language of the (indiscernible) order says. I understand the
13 clarification that the Debtors are trying to make
14 (indiscernible) notwithstanding anything, you know, in this
15 order, et cetera (indiscernible)

16 But I do think having the opportunity to clean up a
17 couple of their provisions would make a lot of sense
18 (indiscernible) we're already doing that with respect to other
19 provisions in the order.

20 So, for example, you have the first sentence of
21 Paragraph (m), as in Mary, which says that the (indiscernible)
22 including any assigned contracts, can be (indiscernible)
23 purchase and sale agreement. Clearly, that is not currently
24 the case.

25 Paragraph (n), as in Nancy, also says that the

1 purchaser has provided or will provide (indiscernible) cure
2 dispute, adequate assurance (indiscernible) Section 365.
3 "Cure dispute" is defined now to not include adequate
4 assurance issues (indiscernible) ambiguity there, as well.

5 THE COURT: Okay. Thank you. I know you may have
6 more, but I'll resolve that in a minute.

7 From area code 212-530-5226, who do we have?

8 MR. LINDEN: Hi. Good afternoon. This is Edward
9 Linden from Milbank on behalf of Foundry Digital, LLC. Good
10 afternoon, Your Honor, and thank you very much.

11 We heard just a moment ago from counsel for Marathon
12 (indiscernible) proposed be included in a revised order.
13 We're supportive of that language. I think that there are a
14 number of customers like Marathon (indiscernible) which is
15 inclusive of our client Foundry, that would like
16 (indiscernible) language, so (indiscernible) specifically
17 (indiscernible) that language, we would ask that, you know,
18 the order include Foundry, as well (indiscernible) language.

19 THE COURT: Thank you.

20 Mr. Marcus, Mr. Grogan, and the objecting parties,
21 can you all meet with all parties that have form objections to
22 the order, which is what we're down to, roughly commencing in
23 one hour? And then you can present an agreed order, either
24 tomorrow morning -- early tomorrow morning, midmorning,
25 tomorrow afternoon? And we'll get it entered, so that you can

1 close tomorrow. And Mr. Micheli would be in charge of
2 arranging that meeting that would start in an hour to work
3 through language. Anybody have any problem with that?

4 MR. MARCUS: Your Honor, this is Chris Marcus for
5 the record. That works for us.

6 THE COURT: Thank you.

7 Mr. Silverman?

8 MR. SILVERMAN: That works for me, as, Your Honor.
9 Thank you.

10 THE COURT: Thank you.

11 Mr. Micheli, since it's your evening during the
12 World Series that I'm taking, does it work for you?

13 MR. MICHELI: That does, Your Honor. Thank you.

14 THE COURT: All right. Mr. Grogan, what time would
15 you like to come back tomorrow? I will try and fit you in.
16 But if you'll tell me your -- like, if you want to do it at 8
17 a.m., I can do that very easily. If you want to give yourself
18 a little more time in the morning and you can get your ducks
19 in a row, I can do it later in the morning, for example.

20 MR. GROGAN: I'm --

21 THE COURT: I don't want to delay you, so that you -
22 -

23 MR. GROGAN: Yeah, I --

24 THE COURT: -- can get your --

25 MR. GROGAN: I --

1 THE COURT: -- closing done tomorrow.

2 MR. GROGAN: I think 8 a.m. would be great.

3 THE COURT: 8 a.m.

4 MR. GROGAN: Yeah.

5 THE COURT: All right. If -- Mr. Micheli, frankly,
6 I'm not going to look at anything before 5:00 in the morning.
7 So can you file the revised order by 5:00 a.m.?

8 MR. MICHELI: Yes, Your Honor.

9 THE COURT: Great. The hearing is at 8 a.m.

10 You wanted to introduce some evidence today. What
11 is that evidence that you wanted to introduce?

12 MR. GROGAN: I did. Your Honor, we had two
13 declarations in support of the sale of these assets. So the
14 first was the declaration of Mr. Drake Harvey, which was filed
15 on the Court's docket at Docket Number 349. And I would --

16 THE COURT: Is there any objection to the admission
17 of Mr. Harvey's declaration filed at ECF 349?

18 (No verbal response)

19 THE COURT: It is admitted.

20 (Harvey Declaration at ECF 349 received in evidence)

21 THE COURT: Are there any questions for Mr. Harvey?

22 (No verbal response)

23 THE COURT: All right. What's your next piece of
24 evidence?

25 MR. GROGAN: Your Honor, the next is the declaration

1 of Ryan Hamilton of Jefferies. That was filed at Docket
2 Number 348.

3 THE COURT: Is there any objection to the admission
4 of Mr. Hamilton's declaration at 348?

5 (No verbal response)

6 THE COURT: It is admitted.

7 (Hamilton Declaration at ECF 348 received in evidence)

8 THE COURT: Is there any examination of
9 Mr. Hamilton?

10 (No verbal response)

11 THE COURT: There is none.

12 MR. GROGAN: And that is it for our evidentiary
13 support.

14 THE COURT: All right. Is there anything else we
15 ought to do tonight? I'm not trying to rush you all.

16 MR. GROGAN: No.

17 THE COURT: But I think, you know, dealing with the
18 particular language is -- that's something Mr. Micheli is just
19 going to have to overcome during the course of the evening,
20 I'm afraid.

21 MR. GROGAN: Yes. That works for us. And we'll see
22 you tomorrow morning at 8:00 o'clock with a hopefully
23 consensual order.

24 THE COURT: I hope it's a consensual order, but you
25 know, if not, we'll deal with the remaining objections. But I

1 think we're down to the point --

2 MR. GROGAN: Yeah.

3 THE COURT: -- where, realistically, we're into a
4 drafting --

5 MR. GROGAN: Wordsmithing.

6 THE COURT: -- question.

7 MR. GROGAN: Yeah.

8 THE COURT: So thank you.

9 I did think some of the stuff that Ms. Liou was
10 including about me making findings, you know, probably isn't
11 appropriate. The findings should be that anything that we
12 approve the transfer of meets those requirements in the event
13 of a challenge. So you've got some real drafting to do,
14 Mr. Micheli, but I suspect that -- I know that you're up to
15 the task. And we'll see you at 8:00 o'clock in the morning.

16 THE COURT: Thank you.

17 MR. GROGAN: Thank you.

18 THE COURT: We're in recess.

19 MR. GROGAN: Thank you.

20 MR. PEREZ: Thank you, Your Honor.

21 MS. LIOU: Thank you, Your Honor.

22 THE COURT: Thank you.

23 UNIDENTIFIED: Thank you.

24 THE COURT: Thank you.

25 (Proceedings concluded at 6:05 p.m.)

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*I certify that the foregoing is a correct transcript
to the best of my ability produced from the electronic sound
recording of the proceedings in the above-entitled matter.*

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/S./ MARY D. HENRY

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